

McGraw, Chief Justice, concurring:

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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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I agree with the majority that the provisions of W. Va. Code § 46A-6-107 (1963) prevent the seller of a used car from limiting implied warranties of merchantability and fitness for a particular purpose. I also concur that, by declaration of the Legislature, the Consumer Credit and Protection Act applies to sales of used cars.

I write separately because I am concerned that this opinion might suggest that there are no circumstances in which a party may sell a mechanically defective car to a knowing buyer. There are many individuals who, for one reason or another, fully intend to buy a car that doesn't work well, or has some obvious mechanical problem. Some people are mechanically inclined; some might wish to buy a car for its parts, or, in the case of certain cars, for their future value as collectibles. If the facts are made clear to the buyer, that is, if it is clear that the vehicle has adequate "fitness" for the "particular purpose" intended by the buyer, then it is acceptable to sell a vehicle that is not in perfect working condition.

For a variety of historical reasons, the so called "used-car-dealer" enjoys a position right next to lawyers and politicians in the societal pantheon of the untrustworthy, which no doubt presented a disadvantage to appellee's counsel from the outset. But just as is the case with lawyers and politicians, most car dealers are honest people trying to make a living, and are deserving of representation. The specific facts of this case suggest that the dealership did make a reasonable effort to fulfill its obligations to

the buyer. However, as the majority points out, this question of fact was answered by a jury, as is proper, and that jury found against the dealer. I agree it is not ours to upset that judgment in this case.

Having expressed my limited reservations, I respectfully concur with the majority.